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12 Attorney for Plaintiff Nancy Rountree

14 UNITED STATES DISTRICT COURT

15 NORTHERN DISTRICT OF CALIFORNIA

16 SAN FRANCISCO DIVISION

18 NANCY ROUNTREE,

Docket No. C 10-1683 WHA

19 Plaintiff,

20 v.

21 KEN SALAZAR, SECRETARY OF THE  
U.S. DEPARTMENT OF INTERIOR,

STIPULATION AND AGREEMENT OF  
COMPROMISE AND SETTLEMENT  
AND ~~PROPOSED~~ ORDER

22 Defendant.

23 IT IS HEREBY STIPULATED by and between the parties, after full and open  
24 discussion, that this action be settled and compromised on the following terms:

25 WHEREAS, Plaintiff filed the above-captioned action under Title VII of the Civil  
26 Rights Act of 1964, 42 U.S.C. §2000e-16, as amended;

27 WHEREAS, Plaintiff has filed the following administrative EEO complaints with the  
28 U.S. Department of the Interior: EEOC Case No. 559-2009-0064X.

STIPULATION AND AGREEMENT FOR COMPROMISE AND SETTLEMENT  
No. C 10-1683 WHA

1        WHEREAS, Plaintiff and Defendant wish to avoid any further litigation and  
2 controversy and to settle and compromise fully any and all claims and issues that have been  
3 raised, or could have been raised, arising out of Plaintiff's employment with Defendant, which  
4 have transpired prior to the execution of this Agreement;

5        NOW, THEREFORE, in consideration of the mutual promises contained in this  
6 Agreement, and other good and valuable consideration, receipt of which is hereby  
7 acknowledged, the Parties agree as follows:

8        1. **Settlement Amount.** In full and final settlement of all claims in connection with the  
9 above-captioned action, defendant shall pay Plaintiff a total sum of seventeen thousand six  
10 hundred dollars (\$ 17,600.00) dollars ("Settlement Amount"). There shall be no withholding  
11 from this amount. Plaintiff understands that this payment will be reported to the Internal  
12 Revenue Service ("IRS"), and that any questions as to the tax liability, if any, as a result of this  
13 payment is a matter solely between Plaintiff and the IRS. The check will be made payable to  
14 Mary Dryovage, Esq. and Nancy Rountree, and will be mailed to Plaintiff in care of her  
15 counsel. Plaintiff and her attorney have been informed that payment of the Settlement Amount  
16 may take sixty (60) days or more from the date that the Court "so orders" this Agreement to  
17 process.

18        2. **Release.** In consideration of the payment of the Settlement Amount and the other  
19 terms set forth in this Stipulation and Agreement, Plaintiff hereby releases and forever  
20 discharges Defendant, the United States Department of the Interior, and any and all of their past  
21 and present officials, agents, employees, attorneys, insurers, their successors and assigns, from  
22 any and all obligations, damages, liabilities, actions, causes of actions, claims and demands of  
23 any kind and nature whatsoever, including claims arising under the Age Discrimination in  
24 Employment Act, 29 U.S.C. § 633a, whether suspected or unsuspected, at law or in equity,  
25 known or unknown, or omitted prior to the date she executes this Agreement, which arise from  
26 or relate to her employment with the United States Department of the Interior.

27        3. **Attorneys' Fees.** The parties agree that the Settlement Amount is in full  
28 satisfaction of all claims for attorneys' fees and costs arising from work performed by Plaintiff's

1 counsel at all stages of litigation, including, but not limited to, the processing of Plaintiff's  
 2 administrative and district court complaints in connection with the above-captioned action, and  
 3 any other EEO administrative proceedings which are currently pending.

4       4. **Dismissal**. In consideration of the payment of the Settlement Amount and the other  
 5 terms of this Stipulation and Agreement, Plaintiff agrees that she will within seven days of this  
 6 agreement, execute a Stipulation of Dismissal, which stipulation shall dismiss, with prejudice,  
 7 all claims asserted in this Action or any claims that could have been asserted in this Action.  
 8 The fully executed Stipulation of Dismissal will be held by counsel for Defendant and will be  
 9 filed with the Court upon receipt by Plaintiff's counsel of the Settlement Amount.

10     5. **Waiver of California Civil Code § 1542**. The provisions of California Civil Code  
 11 Section 1542 are set forth below:

12      "A general release does not extend to claims which the creditor  
 13     does not know or suspect to exist in his or her favor at the time  
 14     of executing the release, which if known by him or her must have  
 15     materially affected his or her settlement with the debtor."

16 Plaintiff has been apprised of the statutory language of Civil Code Section 1542 by her  
 17 attorneys, and fully understanding the same, nevertheless elects to waive the benefits of any  
 18 and all rights she may have pursuant to the provision of that statute and any similar provision  
 19 of federal law. Plaintiff understands that, if the facts concerning Plaintiff's claims and the  
 20 liability of the government for damages pertaining thereto are found hereinafter to be other than  
 21 or different from the facts now believed by them to be true, this Agreement shall be and remain  
 22 effective notwithstanding such material difference.

23     6. **Agreement as a Complete Defense**. This Agreement may be pleaded as a full and  
 24 complete defense to any subsequent action or other proceeding involving any person or party  
 25 which arises out of the claims released and discharged by the Agreement.

26     7. **No Admission of Liability**. This is a compromise settlement of a disputed claim  
 27 and demand, which settlement does not constitute an admission of liability or fault on the part  
 28 of the Defendant, the United States Department of the Interior, or any of their past and present  
 officials, agents, employees, attorneys, or insurers on account of the events described in

1 Plaintiff's complaints in these actions.

2       8. **Tax Liability**. If any withholding or income tax liability is imposed upon Plaintiff  
3 or Plaintiff's counsel based on payment of the settlement sum received herein, Plaintiff or  
4 Plaintiff's counsel shall be solely responsible for paying any such determined liability from any  
5 government agency thereof.

6       9. **Enforcement Sole Remedy**. The parties agree that should any dispute arise with  
7 respect to the implementation of the terms of this Agreement, Plaintiff shall not seek to rescind  
8 the Agreement and pursue her original causes of action. Plaintiff's sole remedy in such a  
9 dispute is an action to enforce the Agreement in the United States District Court for the  
10 Northern District of California. Enforcement jurisdiction, however, will be limited.\*

11      10. **Construction**. Each party hereby stipulates that it has been represented by and has  
12 relied upon independent counsel in the negotiations for the preparation of this Agreement, that  
13 it has had the contents of the Agreement fully explained to it by such counsel, and is fully  
14 aware of and understands all of the terms of the Agreement and the legal consequences thereof.  
15 For purposes of construction, this Agreement shall be deemed to have been drafted by all  
16 Parties to this Agreement and shall not, therefore, be construed against any Party for that reason  
17 in any subsequent dispute.

18      11. **Severability**. If any provision of this Agreement shall be invalid, illegal, or  
19 unenforceable, the validity, legality, and enforceability of the remaining provision shall not in  
20 any way be affected or impaired thereby.

21      12. **Integration**. This instrument shall constitute the entire Agreement between the  
22 parties, and it is expressly understood and agreed that the Agreement has been freely and  
23 voluntarily entered into by the parties hereto with the advice of counsel, who have explained  
24 the legal effect of this Agreement. The parties further acknowledge that no warranties or  
25 representations have been made on any subject other than as set forth in this Agreement. This  
26 Agreement may not be altered, modified or otherwise changed in any respect except by writing,  
27 duly executed by all of the parties or their authorized representatives.

28      13. **Authority**. The signatories to this Agreement have actual authority to bind the

parties.

#### **14. Knowing and Voluntary Waiver of Remedies Under Age Discrimination in**

**Employment Act.** Plaintiff acknowledges that she has up to twenty-one (21) calendar days from the date she receives this Agreement to review and consider this Agreement, discuss it with an attorney of her choice, and decide to sign it or not sign it, although she may accept or return it to Defendant's counsel at any time within those twenty-one (21) days. Plaintiff is advised to consult her attorney about the Agreement.

15. Once Plaintiff signs and dates this Agreement, she will have seven (7) days in which to revoke her acceptance. To revoke, Plaintiff must send a written statement of revocation, which should be mailed and faxed to:

Jennifer Wang  
Office of the United States' Attorney  
450 Golden Gate Ave., 9<sup>th</sup> Fl.  
San Francisco, CA 94102  
(415) 436-6748 (fax)

14 Plaintiff understands that if she revokes, this Agreement shall have no effect. If Plaintiff does  
15 not revoke, this Agreement will become effective on the eighth (8th) day ("the Effective Date")  
16 after the date Plaintiff signs and dates this Agreement.

18 | DATED: Dec. 24, 2010

Nancy Rountree  
NANCY ROUNTREE  
Plaintiff

DATED: Dec. 24, 2010

*Mary Dryvage*  
MARY DRYVAGE  
Plaintiff's Attorney

DATED: Dec 28, 2010

JENNIFER S WANG  
Assistant United States Attorney  
Attorney for Defendant

PURSUANT TO STIPULATION, IT IS SO ORDERED.

27 Dated: January 5, 2011.

  
HON. WILLIAM H. ALSUP  
United States District Judge

\* The Court shall retain jurisdiction to enforce this agreement for only one year.